

# Order

Michigan Supreme Court  
Lansing, Michigan

March 9, 2011

Robert P. Young, Jr.,  
Chief Justice

142268

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

v

SC: 142268  
COA: 296455  
Hillsdale CC: 09-332105-FC

JAMES WESLEY MCKINNEY,  
Defendant-Appellee.

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On order of the Court, the application for leave to appeal the October 26, 2010 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. The defendant's statement that he would "just as soon wait" until he had an attorney before talking to the police, followed immediately by his statement that he was willing to discuss the "circumstances," was not an unequivocal assertion of the right to counsel or a statement declaring an intention to remain silent. *Davis v United States*, 512 US 452, 457; 114 S Ct 2350; 129 L Ed 2d 362 (1994). We REMAND this case to the Hillsdale Circuit Court for further proceedings not inconsistent with this order.

MARILYN KELLY, J., would deny leave to appeal.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 9, 2011

*Corbin R. Davis*

Clerk